

### **§ 824.13**

that arise out of that portion of the evidence that is classified or otherwise protected.

(e) DOE has the burden of going forward with and of proving by a preponderance of the evidence that the violation occurred as set forth in the final notice of violation and that the proposed civil penalty is appropriate. The person to whom the final notice of violation has been addressed shall have the burden of presenting and of going forward with any defense to the allegations set forth in the final notice of violation. Each matter of controversy shall be determined by the Hearing Officer upon a preponderance of the evidence.

#### **§ 824.13 Initial decision.**

(a) The Hearing Officer shall issue an initial decision as soon as practicable after the hearing. The initial decision shall contain findings of fact and conclusions regarding all material issues of law, as well as reasons therefor. If the Hearing Officer determines that a violation has occurred and that a civil penalty is appropriate, the initial decision shall set forth the amount of the civil penalty based on:

- (1) The nature, circumstances, extent, and gravity of the violation or violations;
- (2) The violator's ability to pay;
- (3) The effect of the civil penalty on the person's ability to do business;
- (4) Any history of prior violations;
- (5) The degree of culpability; and
- (6) Such other matters as justice may require.

(b) The Hearing Officer shall serve all parties with the initial decision by certified mail, return receipt requested. The initial decision shall include notice that it constitutes a final order of DOE 30 days after the filing of the initial decision unless the Secretary files a Notice of Review. If the Secretary files a notice of Notice of Review, he shall file a final order as soon as practicable after completing his review. The Secretary, at his discretion, may order additional proceedings, remand the matter, or modify the amount of the civil penalty assessed in the initial decision. DOE shall notify the person of the Secretary's action under this paragraph in writing by certified mail,

### **10 CFR Ch. III (1–1–08 Edition)**

return receipt requested. The person against whom the civil penalty is assessed by the final order shall pay the full amount of the civil penalty assessed in the final order within thirty days (30) unless otherwise agreed by the Director.

#### **§ 824.14 Special procedures.**

A person receiving a final notice of violation under § 824.7 may elect in writing, within 30 days of receipt of such notice, the application of special procedures regarding payment of the penalty set forth in section 234A.c.(3) of the Act, 42 U.S.C. 2282a(c)(3). The Director shall promptly assess a civil penalty, by order, after the date of such election. If the civil penalty has not been paid within sixty calendar days after the assessment has been issued, the DOE shall institute an action in the appropriate District Court of the United States for an order affirming the assessment of the civil penalty.

#### **§ 824.15 Collection of civil penalties.**

If any person fails to pay an assessment of a civil penalty after it has become a final order or after the appropriate District Court has entered final judgment for DOE under § 824.14, DOE shall institute an action to recover the amount of such penalty in an appropriate District Court of the United States.

#### **§ 824.16 Direction to NNSA contractors.**

(a) Notwithstanding any other provision of this part, the NNSA Administrator, rather than the Director, signs, issues, serves, or takes the following actions that direct NNSA contractors or subcontractors.

- (1) Subpoenas;
- (2) Orders to compel attendance;
- (3) Disclosures of information or documents obtained during an investigation or inspection;
- (4) Preliminary notices of violation; and
- (5) Final notices of violations.

(b) The Administrator shall act after consideration of the Director's recommendation. If the Administrator disagrees with the Director's recommendation, and the disagreement

cannot be resolved by the two officials, the Director may refer the matter to the Deputy Secretary for resolution.

#### APPENDIX A TO PART 824—GENERAL STATEMENT OF ENFORCEMENT POLICY

##### I. INTRODUCTION

a. This policy statement sets forth the general framework through which DOE will seek to ensure compliance with its classified information security regulations and rules and classified information security-related compliance orders (hereafter collectively referred to as classified information security requirements).

The policy set forth herein is applicable to violations of classified information security requirements by DOE contractors and their subcontractors (hereafter collectively referred to as DOE contractors). This policy statement is not a regulation and is intended only to provide general guidance to those persons subject to the classified information security requirements. It is not intended to establish a formulaic approach to the initiation and resolution of situations involving noncompliance with these requirements. Rather, DOE intends to consider the particular facts of each noncompliance situation in determining whether enforcement penalties are appropriate and, if so, the appropriate magnitude of those penalties. DOE reserves the option to deviate from this policy statement when appropriate in the circumstances of particular cases.

b. Both the Department of Energy Organization Act, 42 U.S.C. 7101, and the Atomic Energy Act of 1954 (the Act), 42 U.S.C. 2011, require DOE to protect and provide for the common defense and security of the United States in conducting its nuclear activities, and grant DOE broad authority to achieve this goal.

c. The DOE goal in the compliance arena is to enhance and protect the common defense and security at DOE facilities by fostering a culture among both DOE line organizations and contractors that actively seeks to attain and sustain compliance with classified information security requirements. The enforcement program and policy have been developed with the express purpose of achieving a culture of active commitment to security and voluntary compliance. DOE will establish effective administrative processes and incentives for contractors to identify and report noncompliances promptly and openly and to initiate comprehensive corrective actions to resolve both the noncompliances themselves and the program or process deficiencies that led to noncompliance.

d. In the development of the DOE enforcement policy, DOE believes that the reasonable exercise of its enforcement authority can help to reduce the likelihood of serious

security incidents. This can be accomplished by providing greater emphasis on a culture of security awareness in existing DOE operations and strong incentives for contractors to identify and correct noncompliance conditions and processes in order to protect classified information of vital significance to this nation. DOE wants to facilitate, encourage, and support contractor initiatives for the prompt identification and correction of problems. These initiatives and activities will be duly considered in exercising enforcement discretion.

e. Section 234B of the Act provides DOE with the authority to impose civil penalties and also with the authority to compromise, modify, or remit civil penalties with or without conditions. In implementing section 234B, DOE will carefully consider the facts of each case of noncompliance and will exercise appropriate judgment in taking any enforcement action. Part of the function of a sound enforcement program is to assure a proper and continuing level of security vigilance. The reasonable exercise of enforcement authority will be facilitated by the appropriate application of security requirements to nuclear facilities and by promoting and coordinating the proper contractor attitude toward complying with those requirements.

##### II. PURPOSE

The purpose of the DOE enforcement program is to promote and protect the common defense and security of the United States by:

a. Ensuring compliance by DOE contractors with applicable classified information security requirements.

b. Providing positive incentives for a DOE contractor's:

- (1) Timely self-identification of security deficiencies,
- (2) Prompt and complete reporting of such deficiencies to DOE,
- (3) Root cause analyses of security deficiencies,
- (4) Prompt correction of security deficiencies in a manner which precludes recurrence, and
- (5) Identification of modifications in practices or facilities that can improve security.

c. Deterring future violations of DOE requirements by a DOE contractor.

d. Encouraging the continuous overall improvement of operations at DOE facilities.

##### III. STATUTORY AUTHORITY

Section 234B of the Act subjects contractors, and their subcontractors and suppliers, to civil penalties for violations of DOE regulations, rules and orders regarding the safeguarding and security of Restricted Data and other classified information.